

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 236 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
1 : YES; 2 to 5 : NO

BHOI MUKESH @ MUKLO SAVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA for Petitioner [Not present]
MRS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/07/1999

ORAL JUDGEMENT

Heard the learned AGP Mrs. Punani for the
respondents.

2. The petitioner herein challenges the order of preventive detention dated 6th September, 1998 made by the District Magistrate, Jamnagar under the powers

conferred upon him under sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act']. I have perused the grounds of detention. It is alleged that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act and his activities are prejudicial to the maintenance of public order. While recording his subjective satisfaction in respect of the petitioner's being a bootlegger and his activities being prejudicial to the maintenance of public order, the detaining authority has relied upon the five offences registered against the petitioner for violation of prohibition law. Two of the said offences are pending trial and three of them are pending investigation. In each of the said offences, the petitioner was found to be in possession of substantial quantity of country liquor and is alleged to be storing and selling country liquor. Besides aforesaid offences, some four witnesses; on assurance of anonymity, have made statements in respect of petitioner's nefarious activities showing that not only the petitioner is dealing in country liquor, he also harasses the people who come in his way or whom he believes to be police informant or who do not surrender to his demands. The petitioner is alleged to be carrying lethal weapon and of using the same for intimidating the people and for bullying them to surrender to his demands.

3. I have perused the grounds of challenge. The order of detention is challenged mainly on the grounds (a) the activities of petitioner are not prejudicial to the maintenance of public order and the same does not disturb the even tempo of life; (b) the incidents referred to by the witnesses are not connected or related to the bootlegging activities of the petitioner, and therefore, the same cannot affect the public order; (c) the representation made against the order of detention has not been considered expeditiously; (d) the non-disclosure of the identity and other particulars of the witnesses has prejudiced the petitioner's right to make effective representation, therefore, the privilege claimed under Section 9 (2) of the Act is unwarranted and is violative of Article 22 (5) of the Constitution of India; (e) the petitioner is not a person in whose possession the stock of country liquor was found.

4. The petition is contested by the learned AGP Mrs. Punani. She has relied upon the supporting material and the affidavit made by the detaining authority. It is contended that no representation whatsoever has been received against the impugned order of detention. Besides, the averment made in this respect is vague. It

is further contended that the veracity of the statements made by the witnesses and the genuineness of the apprehension voiced by them were examined by the detaining authority personally and having so examined, he was satisfied that the names and other particulars of the witnesses were required to be withheld.

5. I have perused the evidence in support of the grounds of detention and the affidavit made by the detaining authority. Be it noted that the averment made in the affidavit in respect of the representation made against the impugned order of detention is vague. It does not disclose the specific date on which the said representation was made, or on the date on which it was delivered to the detaining authority, neither a copy of the representation is produced on record of the matter. In absence of the specific averment and in view of the specific denial made by the detaining authority, referred to hereinabove, the contention is required to be rejected. The statements of witnesses were recorded by the concerned Police Inspector on 26th August, 1998. The veracity of the same has been examined by the detaining authority on 5th September, 1998. The subjective satisfaction arrived at by the detaining authority is manifest from the grounds of detention and it cannot be said that the privilege under Sec. 9 (2) of the Act has been wrongly claimed. The question whether the bootlegging activities of the petitioner are prejudicial to maintenance of public order or not is answered by the detaining authority in the grounds of detention. It is categorically stated that the petitioner is indulging himself into storing and selling country liquor. Consumption of such country liquor is injurious to human health. The fact of possession and selling of country liquor and its effect on the human health and the public order has been examined by the Division Bench of this Court in the matter of Popat Mohan Vaghri v. State of Gujarat & Ors., [1989 (1) GLH 551]. The Court has relied upon Section 3 (4) of the Act and the explanation thereto. On consumption of country liquor, the Court has observed that, " ... the consumption of country liquor by a large number of people itself is a danger to the public health. This is a matter of common sense and such a reasonable inference has got to be drawn by having recourse to experience of life. For this purpose, no authority or erudite research is required. " The court has further observed that, " These people get inebriated on public and in the state of intoxication behave in disorderly manner. The activity of storing liquor on large scale and selling the same through liquor dens in public alone would be sufficient to adversely affect

public order. ...In the localities inhabited by poor and downtrodden people such activities of storing and selling liquor in public are normally being carried on. By sale of liquor in public in such localities, normal life of people is disturbed. Sub-section 4 of Section 3 of the Act provides inter alia, that a person shall be deemed to be acting in a manner prejudicial to the maintenance of public order when such person is engaged in or is making preparation for engaging in any activity as a bootlegger which affect adversely or are likely to affect adversely the maintenance of public order. The explanation thereto provides, inter alia, that for the purpose of the said sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, inter alia, if any of the activities, if directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Considering the extended meaning, it leaves no doubt that the activities of the petitioner of possessing and selling country liquor is prejudicial to the maintenance of public order within the meaning of Sub-section 4 of section 3 of the Act. Hence, not only the petitioner is a bootlegger, his activities are prejudicial to the maintenance of public order. The subjective satisfaction recorded by the detaining authority in this respect is required to be upheld. Consequently, the order of detention is also required to be upheld.

6. For the aforesaid reasons, the petition is dismissed. Rule is discharged.

Prakash*